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EXAMINER

KYLE, CHARLES R

ART UNIT	PAPER NUMBER
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3624

DATE MAILED: 11/19/2002

17

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/335,648

Applicant(s)

KIMLE ET AL.

Examiner

Charles R Kyle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 04 November 2002.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-23 and 25-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 and 25-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_                      6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

The finality of the prior office action is withdrawn to address Applicants' arguments and advance the prosecution of the case.

#### ***Claim Rejections - 35 USC § 103***

For clarity, the rejections set forth in the prior office action are restated below.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-2, 4-18, 20, 22-23 and 25-28** are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al in view of Commodity Trading Manual, hereinafter referred to as Manual.

**Concerning Claim 1**, Walker et al disclose the invention substantially as claimed including a method for contracting of commodities on the Internet (Abstract); which provides a centralized database for storage and retrieval of data (Fig. 2, elements 255, 269, 265, 267 and Col. 12, line 35 to Col. 13, line 62); storage in the database data relating to buyers' desires for commodities (Col. 13, lines 1-10 and 23-29); in response to a command input, displaying a list of desired commodities and related information regarding types, amounts or deliveries of the desired commodities (Figure 9 and Col. 18, line 56 to Col. 19, line 12; receiving input data relating to a specific type and amount of commodity which the supplier is willing to supply (Col.

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13, lines 11-22 and 30-34) and generating a contract for the sale of the specific type and amount of the commodity by the supplier to the buyer (Fig. 2, element 280 and Col. 13, lines 44-48).

Walker et al do not specifically disclose the storage and processing of information related to agricultural commodities in their invention although they suggest its applicability to commodities when they describe commodities as being handled best by buyer-driven markets, such as their invention. See Col. 2, lines 45-54. Manual discloses information related to agricultural commodities including types and amounts of agricultural commodities (page 194), trading by buyers desiring agricultural commodities and suppliers willing to supply agricultural commodities (pages 35-46) and sales contracts for such agricultural commodities (pages 315 and 324). It would have been obvious to one of ordinary skill in the art at the time of the invention to have processed the agricultural commodities information to generate contracts as disclosed by Manual in the method of Walker et al, because this would have provided a buyer-driven market suitable for commodities which had the advantages recited by Walker et al at Col. 10, line 57 to Col. 11, line 3, as follows:

It is a goal of the present invention to provide a robust system which matches buyers' requirements with sellers capable of satisfying those requirements. The invention provides a global bilateral buyer-driven system for creating binding contracts incorporating various methods of communication, commerce and security for the buyer and the seller. The power of a central controller to field binding offers from buyers, communicate those offers globally in a format which can be efficiently accessed and analyzed by potential sellers, effectuate performance of resulting contracts, resolve disputes arising from those contracts, and maintain billing, collection, authentication, and anonymity makes the present invention an improvement over conventional systems.

**As to Claim 2**, Walker et al disclose information input by a browser at Col. 15, line 66 to Col. 16, line 2.

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**Regarding Claim 4**, Manual discloses agricultural commodities as agricultural products at page 193, paragraph 1 to page 194, para. 2. See also page 197, Table and page 202, para. 3.

**With respect to Claim 5**, Manual discloses agricultural commodities as grains at page 199, para. 1 to page 202, para. 6 and as oilseeds at page 206, para. 5 to page 212 para. 4.

**Regarding Claim 6**, the Examiner takes Official Notice that fruits and vegetables are perishable products, as are grain and oilseeds. They require much the same harvesting, shipment and processing as grain and oilseeds. It would have been obvious to one of ordinary skill in the art at the time of the invention to have utilized the combination of elements of Walker et al and Manual to contract for fruit and vegetable production because these products were analogous to grain and oilseeds and had similar requirements.

**With respect to Claim 7**, Manual discloses agricultural commodities as animals at page 212, para. 5 to page 219, para. 6.

**Regarding Claim 8**, see the discussion of Claim 6 above.

**As to Claim 9**, Manual discloses data relating to allocation of quantities of agricultural products among a plurality of areas at page 199, para. 1 to page 201, para.6. It would have been obvious to one of ordinary skill in the art at the time of the invention to have included this feature in the method of Walker et al because this would have facilitated the real world benefit of obtaining agricultural products of different varieties at differing times. It would also have reduced risk of loss of deliverable agricultural product by obtaining product from a plurality of areas, thus making total supply less susceptible to bad weather in one area.

**Concerning Claim 10**, see the discussion of Claim 4 above and it would further have been obvious to have updated the listing based on a change in data as a result of contracting

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between the supplier and the buyer. For example, if Smith had input data about desired 5,000 acres of Durum wheat, the database listing would have to have been updated to reflect that fact to correctly present information to potential suppliers. If Jones had then contracted for Jones' 5,000 acres of Durum wheat, the database would likewise require updating of the fact that the acreage was committed to production for Smith in order to correctly present information to other contracting participants.

**Regarding Claim 11**, Walker et al disclose a paper contract at Col. 6, lines 35-44.

**As to Claim 12**, Walker et al disclose an electronic contract using a digital signature at Col. 6, lines 45-65.

**Regarding Claim 13**, see the discussion of Claim 1 above, and Manual further discloses data related to agricultural crops to be expressed as bushels at page 324, "trading unit". As to the element recited in Claim 13 of updating data to reflect additional acres committed by the grower to display allocation of acres committed to the desired crop, see the discussion of Claim 10 above regarding updating.

**As to Claim 14**, Manual discloses management of delivery times and methods at page 350, "Futures Contracts", line 4.

**Regarding Claim 15**, Manual teaches utilization of quality data in commodities contracts at page 324, "Deliverable Grades" and page 350, "Futures Contract", fourth line.

**Concerning Claim 16**, Manual teaches pricing based on a variable at page 324, line 4, "Daily Price Limit".

**As to Claim 17**, Manual discloses time of delivery as a variable at page 201, para. 2-5.

**Regarding Claim 18**, Walker et al teach accessing a centralized database installed on an Internet Web server at Col. 5, line 66 to Col. 16, line 22.

**As to Claim 20**, see the discussion of Claim 4 above.

**Concerning Claims 22 and 23**, Manual teaches distinguishing among agricultural crops by geographic regions, product type, and time of delivery at page 199, para. 1 to page 201, para. 6. It would have been obvious to one of ordinary skill in the art at the time of the invention to have distinguished among agricultural products in the combination of Walker et al and Manual because this would have allowed potential sellers to contract for the particular product types grown in their particular areas and deliverable at times suitable to them.

**As to Claim 25**, Walker et al disclose an apparatus for contracting for commodities over a wide area network comprising an application/web server and a database serve at Col. 11, lines 58-63 and Col. 14, lines 30-52; communications links for the above at Fig. 1, elements 100, 110, 120; one or more user terminals, Fig. 1, elements 300, 400; and software to store data in the database data relating to buyers' desires for commodities (Col. 13, lines 1-10 and 23-29); in response to a command input, displaying a list of desired commodities and related information regarding types, amounts or deliveries of the desired commodities (Figure 9 and Col. 18, line 56 to Col. 19, line 12; receiving input data relating to a specific type and amount of commodity which the supplier is willing to supply (Col. 13, lines 11-22 and 30-34) and generating a contract for the sale of the specific type and amount of the commodity by the supplier to the buyer (Fig. 2, element 280 and Col. 13, lines 44-48).

Walker et al do not specifically disclose the storage and processing of information related to agricultural commodities in their invention although they suggest its applicability to

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commodities when they describe commodities as being handled best by buyer-driven markets, such as their invention. See Col. 2, lines 45-54. Manual discloses information related to agricultural commodities including types and amounts of agricultural commodities (page 194), trading by buyers desiring agricultural commodities and suppliers willing to supply agricultural commodities (pages 35-46) and sales contracts for such agricultural commodities (pages 315 and 324). It would have been obvious to one of ordinary skill in the art at the time of the invention to have processed the agricultural commodities information to generate contracts as disclosed by Manual in the system of Walker et al, because this would have provided a buyer-driven market, suitable for commodities and which had the advantages recited by Walker et al at Col. 10, line 57 to Col. 11, line 3. See the quotation of this text from Walker et al in the discussion of Claim 1 above.

**As to Claim 26**, Walker et al disclose a wide area distributed network (WAN) at Col. 11, lines 58-63; plural seller computers in operative communication with the WAN at Fig. 1, elements 300, Fig. 3 and Col. 14, lines 53 to Col. 15, line 22; plural buyer computers in operative communication with the WAN at Fig. 1, elements 400, Fig. 4 and Col. 15, lines 22 to 29; a database storing data relating to a specific type and amount of commodity which a supplier is willing to supply (Col. 13, lines 11-22 and 30-34); a database storing data relating to buyers' desires for commodities (Col. 13, lines 1-10 and 23-29); and generation of a contract for the sale of the specific type and amount of the commodity by the supplier to the buyer (Fig. 2, element 280 and Col. 13, lines 44-48).

Walker et al do not specifically disclose the storage and processing of information related to agricultural commodities in their invention although they suggest its applicability to



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commodities when they describe commodities as being handled best by buyer-driven markets, such as their invention. See Col. 2, lines 45-54. Manual discloses information related to agricultural commodities including types and amounts of agricultural commodities (page 194), trading by buyers desiring agricultural commodities and suppliers willing to supply agricultural commodities (pages 35-46) and sales contracts for such agricultural commodities (pages 315 and 324). It would have been obvious to one of ordinary skill in the art at the time of the invention to have processed the agricultural commodities information to generate contracts as disclosed by Manual in the system of Walker et al, because this would have provided a buyer-driven market, suitable for commodities and which had the advantages recited by Walker et al at Col. 10, line 57 to Col. 11, line 3. See the quotation of this text from Walker et al in the discussion of Claim 1 above.

**Concerning Claim 27**, Walker et al disclose a software security component to restrict access to the system at Col. 12, lines 27-30 and Col. 15, lines 3-5.

**Regarding Claim 28**, Walker et al disclose varying levels of access to data by authorized users of the system at Col. 27, line 19 to Col. 30, line 29.

**Claims 3 and 19** are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al in view of Commodity Trading Manual and further in view of the Microsoft Press Computer Dictionary, Third Edition, hereinafter referred to as Dictionary.

**As to Claims 3 and 19**, Walker et al and Manual teach the invention substantially as claimed. See the discussions of Claims 1, 13 and 18 above. They do not specifically disclose the use of Java or other applets for input of and access to information to the system. Dictionary,

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however teaches the Java language and Java applets as useful for secure, robust, platform neutral programming of interactive applications for Internet Web browsers. See Java and Java applet topics, page 268 of Dictionary. It would have been obvious to one of ordinary skill in the art at the time of the invention to have used Java applets for data input and access as taught by Dictionary, in the combination of Walker et al and Manual because this would have provided a for secure, robust, platform neutral method for users to input and access information to contract for commodities on the Internet.

**Claim 21** is rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al in view of Commodity Trading Manual and further in view of the Peterson et al.

**As to Claim 21**, Walker et al and Manual teach the invention substantially as claimed. See the discussions of Claim 13 above. They do not specifically disclose the allocation of data of numbers of acres among a plurality of grain elevators. Peterson et al, however suggest the need for such an allocation in Background of the Invention. They disclose that grain dust is a substantial problem in handling of agricultural products, as it may be contaminated with fungus or cause explosions. It would have been obvious to one of ordinary skill in the art at the time of the invention to have allocated data on agricultural crops among a plurality of grain elevators as taught by Peterson et al in the method of Walker et al and Manual because this would have reduced the risk of total loss of a contract's agricultural crops in the event of grain contamination or explosion a particular grain elevator by "spreading the risk around" among elevators.

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***Response to Arguments***

Applicant's arguments filed November 4, 2002 have been fully considered but they are not persuasive.

Applicants' arguments with respect to due diligence begin at page 4 with a discussion of Declarations. At the last four lines of page 4, Applicants quote the original Declaration of Prior Invention which discusses formation of the company, planning, obtaining capital, etc. Please note quotation of MPEP Section 2138.06 below:

**2138.06 "Reasonable Diligence"**

The diligence of 35 U.S.C. 102(g) relates to reasonable "attorney-diligence" and "engineering-diligence" (Keizer v. Bradley, 270 F.2d 396, 397, 123 USPQ 215, 216 (CCPA 1959)), which does not require that "an inventor or his attorney ... drop all other work and concentrate on the particular invention involved...." Emery v. Ronden, 188 USPQ 264, 268 (Bd. Pat. Inter. 1974).

**CRITICAL PERIOD FOR ESTABLISHING DILIGENCE BETWEEN ONE WHO WAS FIRST TO CONCEIVE BUT LATER TO REDUCE TO PRACTICE THE INVENTION**

The critical period for diligence for a first conceiver but second reducer begins not at the time of conception of the first conceiver but just prior to the entry in the field of the party who was first to reduce to practice and continues until the first conceiver reduces to practice. Hull v. Davenport, 90 F.2d 103, 105, 33 USPQ 506, 508 (CCPA 1937) ("lack of diligence from the time of conception to the time immediately preceding the conception date of the second conceiver is not regarded as of importance except as it may have a bearing upon his subsequent acts"). What serves as the entry date into the field of a first reducer is dependent upon what is being relied on by the first reducer, e.g., conception plus reasonable diligence to reduction to practice (Fritsch v. Lin, 21 USPQ2d 1731, 1734 (Bd. Pat. App. & Inter. 1991), Emery v. Ronden, 188 USPQ 264, 268 (Bd. Pat. Inter. 1974)); an actual reduction to practice or a constructive reduction to practice by the filing of either a U.S. application (Rebstock v. Flouret, 191 USPQ 342, 345 (Bd. Pat. Inter. 1975)) or reliance upon priority under 35 U.S.C. 119 of a foreign application (Justus v. Appenzeller, 177 USPQ 332, 339 (Bd. Pat. Inter. 1971) (chain of priorities under 35 U.S.C. 119 and 120, priority under 35 U.S.C. 119 denied for failure to supply certified copy of the foreign application during pendency of the application filed within the twelfth month)).

**THE ENTIRE PERIOD DURING WHICH DILIGENCE IS REQUIRED MUST BE ACCOUNTED FOR BY EITHER AFFIRMATIVE ACTS OR ACCEPTABLE EXCUSES**

An applicant must account for the entire period during which diligence is required. Gould

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v. Schawlow, 363 F.2d 908, 919, 150 USPQ 634, 643 (CCPA 1966) (Merely stating that there were no weeks or months that the invention was not worked on is not enough.); In re Harry, 333 F.2d 920, 923, 142 USPQ 164, 166 (CCPA 1964) (statement that the subject matter “was diligently reduced to practice” is not a showing but a mere pleading). A 2-day period lacking activity has been held to be fatal. In re Mulder, 716 F.2d 1542, 1545, 219 USPQ 189, 193 (Fed. Cir. 1983) (37 CFR 1.131 issue); Fitzgerald v. Arbib, 268 F.2d 763, 766, 122 USPQ 530, 532 (CCPA 1959) (Less than 1 month of inactivity during critical period. Efforts to exploit an invention commercially do not constitute diligence in reducing it to practice. An actual reduction to practice in the case of a design for a three-dimensional article requires that it should be embodied in some structure other than a mere drawing.); Kendall v. Searles, 173 F.2d 986, 993, 81 USPQ 363, 369 (CCPA 1949) (Diligence requires that applicants must be specific as to dates and facts.).

The period during which diligence is required must be accounted for by either affirmative acts or acceptable excuses. Rebstock v. Flouret, 191 USPQ 342, 345 (Bd. Pat. Inter. 1975); Rieser v. Williams, 225 F.2d 419, 423, 118 USPQ 96, 100 (CCPA 1958) (Being last to reduce to practice, party cannot prevail unless he has shown that he was first to conceive and that he exercised reasonable diligence during the critical period from just prior to opponent’s entry into the field); Griffith v. Kanamaru, 816 F.2d 624, 2 USPQ2d 1361 (Fed. Cir. 1987) (Court generally reviewed cases on excuses for inactivity including vacation extended by ill health and daily job demands, and held lack of university funding and personnel are not acceptable excuses.); Litchfield v. Eigen, 535 F.2d 72, 190 USPQ 113 (CCPA 1976) (budgetary limits and availability of animals for testing not sufficiently described); Morway v. Bondi, 203 F.2d 741, 749, 97 USPQ 318, 323 (CCPA 1953) (voluntarily laying aside inventive concept in pursuit of other projects is generally not an acceptable excuse although there may be circumstances creating exceptions); Anderson v. Crowther, 152 USPQ 504, 512 (Bd. Pat. Inter. 1965) (preparation of routine periodic reports covering all accomplishments of the laboratory insufficient to show diligence); Wu v. Jucker, 167 USPQ 467, 472-73 (Bd. Pat. Inter. 1968) (applicant improperly allowed test data sheets to accumulate to a sufficient amount to justify interfering with equipment then in use on another project); Tucker v. Natta, 171 USPQ 494, 498 (Bd. Pat. Inter. 1971) (“[a]ctivity directed toward the reduction to practice of a genus does not establish, prima facie, diligence toward the reduction to practice of a species embraced by said genus”); Justus v. Appenzeller, 177 USPQ 332, 340-1 (Bd. Pat. Inter. 1971) (Although it is possible that patentee could have reduced the invention to practice in a shorter time by relying on stock items rather than by designing a particular piece of hardware, patentee exercised reasonable diligence to secure the required hardware to actually reduce the invention to practice. “[I]n deciding the question of diligence it is immaterial that the inventor may not have taken the expeditious course....”).

Applicants’ arguments regarding evidence of due diligence begins at page three.

Applicants cite case law which addresses the reasonableness of diligence as considered in “light

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of all the circumstances” but fails to specifically explain what particular circumstances provide excuse from showing more detailed evidence of close-to-daily evidence of pursuing the invention. At page five onto six, Applicants generally argue the complexity of reducing to practice but do not detail any extraordinary efforts that they had to make. Others have met similar difficulties and met the requirements for diligence as set forth in the MPEP citations from above:

A 2-day period lacking activity has been held to be fatal. In re Mulder, 716 F.2d 1542, 1545, 219 USPQ 189, 193 (Fed. Cir. 1983) (37 CFR 1.131 issue); Fitzgerald v. Arbib, 268 F.2d 763, 766, 122 USPQ 530, 532 (CCPA 1959) (Less than 1 month of inactivity during critical period.

Applicants’ citation of *Griffith v. Kanamaru* is informative. While *Griffith* contains the phrasing quoted by Applicants, it also finds that a delay of three months in pursuing the invention due to staffing requirements was not an excuse. The Examiner sees this as analogous to the two month period from October 2, 1996 to December 3, 1996 where no evidence of diligence is provided. See Applicants’ third supplemental declaration. Thus, Applicants’ evidence does not cover the entire period at issue.

Additionally, *Griffith* discloses that delay was due to efforts to meet outside funding requirements; this is analogous to Applicants’ apparent efforts over that period to commercialize the invention. Such commercial efforts are not efforts of diligence of developing the invention. See *Griffith* at page 1363.

Finally, even were the gaps in evidence not excessively long, Applicants’ evidence shows such commercial efforts, not inventive efforts.

Applicant’s substantive arguments regarding art rejections begin at page 9 of the Remarks. Applicant first argues lack of motivation to combine the references. In response to

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applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Applicant next argues against the suggested similarity of commodities disclosed by *Walker* and agricultural commodities. The *Dictionary of Finance and Investment Terms* at page 106, "Commodity Futures Contract" shows such similarity and therefore a motivation to combine at the highlighted area. From this, it is clear there is no distinction among commodities goods. Application of a trading method for oil would suggest application to trading for agricultural products; both are commodities.

Applicant then argues that his *specification* discloses applicability of his invention to some undefined complexity. No claim limitations clarify what complexity Applicant's invention can address that *Walker* cannot.

Applicant then states at page 10 that *Walker* fails to disclose claim limitations of "types and amounts" a supplier is willing to supply at particular times. In the second paragraph of the rejection of Claim 1 set forth above and in the prior office action, it is made clear that *Manual* is the reference relied on for these features. The Examiner's motivation to combine *Walker* and *Manual* and utilize these features of *Manual* is not addressed; the combination is still seen as valid.

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At the last paragraph of page 10, Applicant again argues elements in the specification but fails to detail how the claimed invention would distinguish over the combined references.

At the beginning of page 11, Applicant argues that *Manual* does not disclose “storing data identifying a quantity of agricultural products desired by the buyer; and storing data related to a desired allocation...”. The storage features for products desired by a buyer are disclosed by *Walker* as a centralized database for storage and retrieval of data (Fig. 2, elements 255, 269, 265, 267 and Col. 12, line 35 to Col. 13, line 62); storage in the database data relating to buyers’ desires for commodities (Col. 13, lines 1-10 and 23-29). This *Walker* cite is set forth in the rejection of Claim 1. *Manual* was relied on for its teachings on allocation of agricultural commodities; Applicant has not argued why the Examiner’s citation and reason to combine are deficient. At the second paragraph of page 11, Applicant likewise has not argued why the Examiner’s citation and reason to combine are deficient.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles R Kyle whose telephone number is (703) 305-4458. The examiner can normally be reached on M-F 6:00-2:30.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (703) 308-1065. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9326 for regular communications and (703) 872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.



crk

November 18, 2002



**HANI M. KAZIMI  
PRIMARY EXAMINER**